

**ENTERED**

January 06, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

VITOL, INC.,

*Plaintiff,*

v.

UNITED STATES OF AMERICA,

*Defendant.*§  
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CIVIL ACTION H- 18-2275

**MEMORANDUM OPINION AND ORDER**

Pending before the court is an unopposed motion to reopen this case and enter judgment filed by defendant the United States of America (the “Government”). Dkt. 89. The case was stayed and administratively closed pending an interlocutory appeal. *See* Dkt. 83. The Fifth Circuit has now resolved that appeal. *See* Dkt. 86. The Government asserts that the resolution of the appeal resolves all issues in this case and final judgment should be entered. Dkt. 89. After considering the motion, other motions that were pending when the case was stayed, and the applicable law, the court finds that the case should be reopened, summary judgment should be granted in favor of the Government, and final judgment should be entered.

**I. BACKGROUND AND ANALYSIS**

First, because this court closed the case pending the interlocutory appeal, and the appeal is now over, the motion to reopen is GRANTED, and the case is hereby REOPENED. The court will now provide some background information and legal analysis relating to the Government’s request for entry of final judgment in its favor.

Vitol’s complaint seeks alternative fuel mixture tax credits for its production of what it deems to be “alternative fuel mixtures” comprised of butane and gasoline. Dkt. 1. It sought partial

summary judgment in its favor on these claims, requesting a finding that “where Congress used the term ‘liquefied petroleum gas’ [or “LPG”] in section 6426(d)(2)(A), that term includes butane.” Dkt. 36. The Magistrate Judge issued a memorandum and recommendation in which she recommended denying the motion for partial summary judgment because, among other reasons, “including butane within the LPG definition leads to the absurd result of incentivizing the production of traditional gasoline with an alternative fuel mixture credit, which is contrary to the intent of Congress.” Dkt. 73. This court adopted the Magistrate Judge’s recommendation in full. Dkt. 75. Vitol then sought certification of the order denying its partial motion for summary judgment for interlocutory appeal, arguing that “the resolution of this legal issue would effectively dispose of the case in favor of one side or the other.” Dkt. 76. The court certified the order as requested and stayed the case. Dkt. 78.

The Fifth Circuit affirmed this court’s order denying Vitol’s motion for partial summary judgment. Dkt. 87. The Fifth Circuit determined that a fuel can be either taxable or alternative under 26 U.S.C. § 6426(d)(2), but not both, and since butane is a taxable fuel, it “cannot be an LPG under § 6426(d)(2) or an alternative fuel for purposes of either § 6426 [tax] credit.” Dkt. 87.

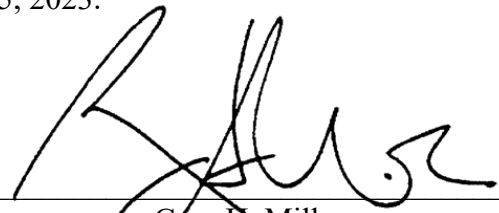
At the time the case was stayed and administratively closed, there were pending motions for summary judgment filed by the Government, Dkt. 59, and Vitol, Dkt. 61. The court has reviewed the Government’s motion for summary judgment, which seeks judgment in the Government’s favor based on its argument that butane is not an alternative fuel mixture under the statute at issue. *See id.* The motion was fully briefed at the time of the appeal. *See* Dkt. 59 (motion), Dkt. 68 (response); Dkt. 72 (reply). Given the Fifth Circuit’s determination on appeal that butane cannot be an LPG under the statute, and all of Vitol’s claims for tax credit rely on butane being an LPG, the Government’s motion for summary judgment (Dkt. 59) is GRANTED.

Vitol's competing motion (Dkt. 61) is DENIED AT MOOT. Vitol's claims are DISMISSED WITH PREJUDICE, and the Government's motion for entry of final judgment (Dkt. 89) is GRANTED.

## II. CONCLUSION

The Government's motion to reopen the case and enter final judgment (Dkt. 89) is GRANTED. This case is REOPENED. The Government's motion for summary judgment (Dkt. 59) is GRANTED, and Vitol's motion for summary judgment (Dkt. 61) is DENIED AS MOOT. All of Vitol's claims are DISMISSED WITH PREJUDICE. The court will enter a final judgment concurrently with this order.

Signed at Houston, Texas on January 5, 2023.



Gray H. Miller  
Senior United States District Judge